

Claim 1 relates to a method for detecting the complete stop of a vehicle. Claim 1 recites that the complete stop is detected as a function of one quantity representing braking force when the vehicle is braked and as a function of one of the vehicle's speed and the speed of at least one of the vehicle's wheels.

Claim 17 relates to a method for detecting a complete stop of a vehicle. Claim 17 recites that the method includes detecting the complete stop as a function of one quantity representing a braking force when the vehicle is braked and as a function of one of a vehicle speed and a speed of at least one vehicle wheel.

Claim 36 relates to a device and recites that the device includes an arrangement configured to detect a complete stop of a vehicle as a function of a quantity that represents a braking force when the vehicle is braked and as a function of one of a vehicle speed and a speed of at least one vehicle wheel.

Sigl et al. purport to relate to an automatic locking brake. Sigl et al. state that "[b]rake pressure is increased when the brake pedal is operated and the vehicle falls short of a very slow reference speed  $v_x$ , which value is variable and increases as the vehicle deceleration increases." Abstract. Sigl et al. further state that "a brake control system [is] for automatically applying a braking pressure when the vehicle speed drops below a very low speed value and the brake pedal is operated." Col. 1, lines 5 to 8. To detect that the brake pedal is operated, Sigl et al. state that "a brake light signal (BLS) switch is coupled in via a terminal 7." Col. 2, lines 66 to 67. The Final Office Action contends that Sigl et al. describe "an automatic locking brake system which is put into effect when it has been determined that the brake pedal is being operated (braking force) and the vehicle speed falls short of a very low vehicle reference speed." Final Office Action at p. 2. The Final Office Action contends that Sigl et al. "shows the two factors of braking force (the detected brake pressure increase), and at least one of the vehicle's speed and the speed of at least one of the vehicle's wheels." Final Office Action at pp. 2 to 3. The contentions contained in the Final Office Action belie the disclosure of Sigl et al. In this regard, Sigl et al. do not disclose, or even suggest, determining a complete stop of a vehicle as a function of one quantity representing braking force when the vehicle is braked. Rather, Sigl et al. state that braking pressure is applied when the vehicle speed drops below a very low speed value and the brake pedal is operated, col. 1, lines 6 to 8. Sigl et al. state that a reference "value is supplied to a comparator 6 which compares the vehicle speed to a low velocity comparator value

$V_x$  and supplies a signal when  $V_{veh} \leq V_x$  and, additionally, a brake light signal (BLS) switch is coupled in via a terminal 7 and the throttle is in the O-position." Col. 2, lines 63 to 68. Thus, Sigl et al. do not detect a complete stop as a function of, inter alia, one quantity representing braking force when the vehicle is braked as recited in claim 1, detecting a complete stop as a function of, inter alia, one quantity representing a braking force when the vehicle is braked as recited in claim 17, or an arrangement configured to detect a complete stop of a vehicle as a function of, inter alia, a quantity that represents a braking force when the vehicle is braked as recited in claim 36. Indeed, a signal from a brake light signal (BLS) switch does not provide a quantity that represents a braking force when the vehicle is braked. Moreover, Sigl et al. do not disclose, or even suggest, that a complete stop is detected based on the brake light signal (BLS) switch.

To anticipate a claim, each and every element as set forth in the claim must be found in a single prior art reference. Verdegaal Bros. v. Union Oil Co. of Calif., 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Furthermore, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). That is, the prior art must describe the elements arranged as required by the claims. In re Bond, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). As more fully set forth above, it is respectfully submitted that Sigl et al. do not disclose, or even suggest "[a] complete stop being detected as a function of one quantity representing braking force when the vehicle is braked and as a function of one of the vehicle's speed and the speed of at least one of the vehicle's wheels" as recited in claim 1, "detecting the complete stop as a function of one quantity representing a braking force when the vehicle is braked and as a function of one of a vehicle speed and a speed of at least one vehicle wheel" as recited in claim 17, or "an arrangement configured to detect a complete stop of a vehicle as a function of a quantity that represents a braking force when the vehicle is braked and as a function of one of a vehicle speed and a speed of at least one vehicle wheel" as recited in claim 36. It is therefore respectfully submitted that Sigl et al. do not anticipate claim 1, claim 17 or claim 36.

### III. REJECTION OF CLAIMS 2 TO 16 AND 18 TO 35 UNDER § 103(a)

Claims 2 to 16 and 18 to 35 were rejected under 35 U.S.C. § 103(a) as unpatentable over Sigl et al. in view of United Kingdom Published Patent Application No. 2 297 619 ("Masur"). Applicant respectfully submits that the combination of Sigl et al. and Masur does not render obvious the present claims for the following reasons.

Claims 2 to 15 ultimately depend from claim 1 and therefore include all of the limitations of claim 1, claim 16 makes reference to the limitations contained in claim 1, and claims 18 to 35 ultimately depend from claim 17 and therefore include all of the limitations of claim 17. As more fully set forth above, it is respectfully submitted that Sigl et al. do not disclose, or even suggest, all of the limitations of claims 1 and 17. In particular, it is respectfully submitted that Sigl et al. do not disclose, or even suggest, "[a] complete stop being detected as a function of one quantity representing braking force when the vehicle is braked and as a function of one of the vehicle's speed and the speed of at least one of the vehicle's wheels" as recited in claim 1 or "detecting the complete stop as a function of one quantity representing a braking force when the vehicle is braked and as a function of one of a vehicle speed and a speed of at least one vehicle wheel" as recited in claim 17.

Masur purports to relate to a method of predicting vehicle standstill. Masur states that "[a] method of determining a time when a vehicle become stationary comprises the steps of determining a threshold speed value . . . for at least one wheel during a braking phase, detecting at least one further speed value . . . for the wheel or wheels at a plurality of successive times . . . to the attainment of a measurable minimum speed, and estimating the time point . . . for the stationary state of the vehicle by forming one or more speed gradients . . . between the speed values and by extrapolating them to the zero speed." Abstract. However, Masur does not disclose, or even suggest, that a complete stop is detected as a function of, inter alia, one quantity representing braking force when the vehicle is braked as recited in claim 1, from which claims 2 to 15 ultimately depend, or detecting complete stop as a function of, inter alia, one quantity representing a braking force when the vehicle is braked as recited in claim 17, from which claims 18 to 35 ultimately depend.

In rejecting a claim under 35 U.S.C. § 103(a), the Examiner bears the initial burden of presenting a prima facie case of obviousness. In re Rijckaert, 9

F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish prima facie obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Second, there must be a reasonable expectation of success. In re Merck & Co., Inc., 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim limitations. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). As indicated above, neither Sigl et al. nor Masur discloses, or even suggests, “[a] complete stop being detected as a function of one quantity representing braking force when the vehicle is braked and as a function of one of the vehicle’s speed and the speed of at least one of the vehicle’s wheels” as recited in claim 1, from which claims 2 to 15 ultimately depend and to which claim 16 refers, or “detecting the complete stop as a function of one quantity representing a braking force when the vehicle is braked and as a function of one of a vehicle speed and a speed of at least one vehicle wheel” as recited in claim 17, from which claims 18 to 35 ultimately depend. It is therefore respectfully submitted that the combination of Sigl et al. and Masur does not render obvious claims 2 to 16 and 18 to 35.

Moreover, it is respectfully submitted that the cases of In re Fine, supra, and In re Jones, 21 U.S.P.Q.2d 1941 (Fed. Cir. 1992), make plain that the Final Office Action’s generalized assertions that it would have been obvious to modify or combine the references do not properly support a § 103 rejection. It is respectfully submitted that those cases make plain that the Final Office Action reflects a subjective “obvious to try” standard, and therefore does not reflect the proper evidence to support an obviousness rejection based on the references relied upon. In particular, the Court in the case of In re Fine stated that:

The PTO has the burden under section 103 to establish a *prima facie* case of obviousness. It can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references. This it has not done. . . .

**Instead, the Examiner relies on hindsight in reaching his obviousness determination. . . . One cannot use hindsight**

**reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.**

In re Fine, 5 U.S.P.Q.2d at 1598 to 1600 (citations omitted; italics in original; emphasis added). Likewise, the Court in the case of In re Jones stated that:

Before the PTO may combine the disclosures of two or more prior art references in order to establish *prima facie* obviousness, there must be some suggestion for doing so, found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. . . .

**Conspicuously missing from this record is any evidence, other than the PTO's speculation (if it be called evidence) that one of ordinary skill . . . would have been motivated to make the modifications . . . necessary to arrive at the claimed [invention].**

In re Jones, 21 U.S.P.Q.2d at 1943, 1944 (citations omitted; italics in original).

That is exactly the case here since it is believed and respectfully submitted that the present Final Office Action offers no evidence whatsoever, but only conclusory hindsight, reconstruction and speculation, which these cases have indicated does not constitute evidence that will support a proper obviousness finding. Unsupported assertions are not evidence as to why a person having ordinary skill in the art would be motivated to modify or combine references to provide the claimed subject matter of the claims to address the problems met thereby. Accordingly, the Office must provide proper evidence of a motivation for modifying or combining the references to provide the claimed subject matter.

More recently, the Federal Circuit in the case of In re Kotzab has made plain that even if a claim concerns a "technologically simple concept" -- which is not the case here -- there still must be some finding as to the "specific understanding or principle within the knowledge of a skilled artisan" that would motivate a person having no knowledge of the claimed subject matter to "make the combination in the manner claimed," stating that:

In this case, the Examiner and the Board fell into the hindsight trap. The idea of a single sensor controlling multiple valves, as opposed to multiple sensors controlling multiple valves, is a technologically simple concept. With this simple concept in mind, the Patent and Trademark Office found prior art statements that in the abstract appeared to suggest the claimed

limitation. But, there was no finding as to the specific understanding or principle within the knowledge of a skilled artisan that would have motivated one with no knowledge of Kotzab's invention to make the combination in the manner claimed. In light of our holding of the absence of a motivation to combine the teachings in Evans, we conclude that the Board did not make out a proper prima facie case of obviousness in rejecting [the] claims . . . under 35 U.S.C. Section 103(a) over Evans.

In re Kotzab, 55 U.S.P.Q.2d 1313, 1318 (Fed. Cir. 2000) (emphasis added). Again, it is believed that there have been no such findings.

Accordingly, there is no evidence that the references relied upon, whether taken alone, combined or modified, would provide the features and benefits of claims 2 to 16 and 18 to 35. It is therefore respectfully submitted that claims 2 to 16 and 18 to 35 are allowable for these reasons.

#### IV. CONCLUSION

It is therefore respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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